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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

MARY E. BARBOUR AS TRUSTEE FOR THE  
MARY E. BARBOUR FAMILY TRUST ONE,  
Derivatively On Behalf of BROCADE  
COMMUNICATIONS SYSTEMS, INC.,

Plaintiff,  
vs.

GREGORY L. REYES, DAVID L. HOUSE,  
MICHAEL KLAYKO, RICHARD DERANLEAU,  
KUMAR MALAVALLI ANTONIO CANOVA,  
MICHAEL J. BYRD, STEPHANIE JENSEN,  
NEIL DEMPSEY, SANJAY VASWANI, L.  
WILLIAM KRAUSE, ROBERT R. WALKER,  
GLENN C. JONES, MICHAEL J. ROSE, SETH D.  
NEIMAN, NICHOLAS G. MOORE,  
CHRISTOPHER B. PAISLEY, WILLIAM K.  
O'BRIEN, LARRY SONSINI, MARK LESLIE,  
TYLER WALL, RENATO A. DIPENTIMA,  
JOHN W. GERDELMAN, KPMG, LLP, WILSON  
SONSINI GOODRICH & ROSATI, P.C. AND  
DOES 1-25, inclusive,

Defendants,

-and-

BROCADE COMMUNICATIONS SYSTEMS,  
INC., a Delaware corporation,

Nominal Defendant.

) Case No. C 08-02029 CRB

) (Derivative Action)

) PLAINTIFF'S ADMINISTRATIVE  
) MOTION TO LODGE A PORTION OF  
) AMENDED COMPLAINT UNDER  
) SEAL AND DECLARATION OF  
) FRANCIS A. BOTTINI, JR.

) [N.D. Cal. Civ. L.R. 7-11, 79-5(d)]

) **ELECTRONICALLY FILED**

1 Plaintiff, by her attorneys, respectfully submits this Administrative Motion to Lodge a  
 2 Portion of Amended Complaint Under Seal.<sup>1</sup> Plaintiff brings this motion pursuant to Northern  
 3 District of California Civil Local Rules 7-11 and 79-5(d) because certain allegations derive from  
 4 documents that nominal defendant Brocade Communications Systems, Inc. ("Brocade") and/or  
 5 certain of the individually-named defendants may deem to contain confidential information entitled  
 6 to protection from public disclosure. Specifically, included in the Amended Complaint are  
 7 allegations based on a review by plaintiff's counsel and by counsel for plaintiff Chan Huat Lim in the  
 8 state court derivative action<sup>2</sup> of documents produced and designated as confidential by other parties  
 9 to this litigation.

10 As a result, such allegations may constitute "sealable" material under Rule 79-5(a), and out  
 11 of an abundance of caution, plaintiff has lodged unredacted and unredacted versions of the Amended  
 12 Complaint with the Clerk of the Court under Rule 79-5(d). Any party that wishes for the redacted  
 13 allegations to remain sealed "must file with the Court and serve a declaration establishing that the  
 14 designated information is sealable, and must lodge and serve a narrowly tailored proposed sealing  
 15 order, or must withdraw the designation of confidentiality." N.D. Cal. Civ. L.R. 79-5(d). Such a  
 16 declaration must provide a "particularized showing" of "good cause" for sealing redacted allegations,  
 17 and if such allegations later become used in a dispositive motion, the party seeking to keep them  
 18 sealed must show a "compelling reason" to do so. *Kamakana v. City & County of Honolulu*, 447  
 19 F.3d 1172, 1180 (9th Cir. 2006). *See also Reilly v. MediaNews Group, Inc.*, No. C 06-04332 SI,

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21 <sup>1</sup> "Amended Complaint" means the Amended Verified Shareholder Derivative Complaint for  
 22 Violations of and Conspiracy to Violate the Racketeer Influenced and Corrupt Organizations Act;  
 23 Violations of the Sarbanes Oxley Act of 2002; Violations of Section 10b of the Securities Exchange  
 24 Act of 1934; Breaches of and Conspiracy to Breach Fiduciary Duty; Fraud; Unjust Enrichment;  
 25 Violations of California Corporations Code Sections 25402 and 25403; Waste of Corporate Assets;  
 26 Declaratory Relief; Breach of Contract; Professional Negligence; and Legal and Accounting  
 27 Malpractice.

28 <sup>2</sup> "State court derivative action" refers to *In re Brocade Communications Systems, Inc. Derivative Litig.*, Lead Case No. 1:05cv041683, pending in the Superior Court of the State of California for the County of Santa Clara.

1 2007 WL 196682, at \*4 (N.D. Cal. Jan. 24, 2007) ("For good cause to exist, the party seeking  
2 protection bears the burden of showing specific prejudice or harm will result if no protective order is  
3 granted....") (quoting *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002)).

4 Finally, if a party that seeks to protect the redacted allegations from public disclosure fails to  
5 file a declaration within five days, then "the document or proposed filing will be made part of the  
6 public record." *Reilly*, 2007 WL 196682, at \*2; *Townshend Intellectual Property, L.L.C. v.*  
7 *Broadcom Corp.*, No. C 06-05118 JF (RS), 2007 WL 2462152, at \*4 (N.D. Cal. Aug. 29, 2007).

8 For the foregoing reasons, plaintiff shall lodge redacted and unredacted versions of her  
9 Amended Complaint with the Clerk of the Court pursuant to Civil Local Rule 79-5(d), and requests  
10 that to the extent no declarations showing good cause to keep the redacted portions under seal are  
11 timely submitted, that the unredacted version of the Amended Complaint be deemed as the operative  
12 complaint on file with this Court as of the date lodged herewith.

13 DATED: July 21, 2008

Respectfully submitted,

14 JOHNSON BOTTINI, LLP  
15 FRANK J. JOHNSON  
16 FRANCIS A. BOTTINI, JR.  
17 DEREK J. WILSON

18 /s/ Francis A. Bottini, Jr.  
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23 Attorneys for Plaintiff  
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**DECLARATION OF FRANCIS A. BOTTINI, JR.**

I, Francis A. Bottini, Jr., hereby declare as follows:

1. I am an attorney at law duly licensed to practice before all of the Courts of the State of California, and am admitted to practice before this Court. I am submitting this declaration in support of Plaintiff's Administrative Motion to Lodge a Portion of Amended Complaint Under Seal. The following statements are based on my personal knowledge, and if called as a witness in any proceeding, I could and would testify competently thereto.

2. The Amended Complaint contains certain allegations that are based on a review of documents provided to me and counsel for state court derivative plaintiff Chan Huat Lim that were designated as "confidential" by nominal defendant Brocade Communications Systems, Inc. and by other parties to this litigation. The allegations that solely derive from such documents are highlighted in one of the copies lodged with the Clerk of the Court, and are redacted in another version also lodged with the Clerk. Because such parties have sole access to the information that presumably would show why such documents should be treated as confidential, I believed that a stipulation to remove such a designation would have been impossible. Thus, I have chosen to lodge redacted and unredacted versions of the Amended Complaint with the Court under Civil Local Rule 79-5(d) to allow the parties an opportunity to show good cause to this Court as why any of the allegations of the Amended Complaint should remain under seal. Given that no proposed order is required under subdivision (d) of Local Rule 79-5, and as plaintiff is not the party who would seek to keep the allegations under seal, I have not submitted a proposed order with the motion.

I declare under penalty of perjury under the laws of the United States of America that, to the best of my knowledge and understanding, the foregoing is true and correct.

Executed on July 21, 2008, in San Diego, California.

By: /s/ Francis A. Bottini, Jr.  
FRANCIS A. BOTTINI, JR